

IC 9-30-6

Chapter 6. Implied Consent; Administrative and Evidentiary Matters

IC 9-30-6-1

Chemical test for intoxication; implied consent

Sec. 1. A person who operates a vehicle impliedly consents to submit to the chemical test provisions of this chapter as a condition of operating a vehicle in Indiana.

As added by P.L.2-1991, SEC.18.

IC 9-30-6-2

Probable cause; offer of test; alternative tests; requirement to submit

Sec. 2. (a) A law enforcement officer who has probable cause to believe that a person has committed an offense under this chapter, IC 9-30-5, or IC 9-30-9, or a violation under IC 9-30-15 shall offer the person the opportunity to submit to a chemical test.

(b) A law enforcement officer:

(1) is not required to offer a chemical test to an unconscious person; and

(2) may offer a person more than one (1) chemical test under this chapter.

(c) A test administered under this chapter must be administered within three (3) hours after the law enforcement officer had probable cause to believe the person committed an offense under IC 9-30-5 or a violation under IC 9-30-15.

(d) A person must submit to each chemical test offered by a law enforcement officer in order to comply with the implied consent provisions of this chapter.

As added by P.L.2-1991, SEC.18. Amended by P.L.53-1994, SEC.7.

IC 9-30-6-3

Arrest; probable cause; evidence of intoxication; refusal to submit to test, admissibility

Sec. 3. (a) If a law enforcement officer has probable cause to believe that a person committed an offense under IC 9-30-5, the person may be arrested. However, if the chemical test results in prima facie evidence that the person is intoxicated, the person shall be arrested for an offense under this chapter, IC 9-30-5, or IC 9-30-9.

(b) At any proceeding under this chapter, IC 9-30-5, or IC 9-30-9, a person's refusal to submit to a chemical test is admissible into evidence.

As added by P.L.2-1991, SEC.18.

IC 9-30-6-4

Bureau rules

Sec. 4. The bureau shall adopt rules under IC 4-22-2 necessary to carry out this chapter, IC 9-30-5, IC 9-30-9, or IC 9-30-15.

As added by P.L.2-1991, SEC.18. Amended by P.L.53-1994, SEC.8.

IC 9-30-6-5

Breath test operators, equipment, and chemicals; certification; rules; certificates as prima facie evidence

Sec. 5. (a) The director of the department of toxicology of the Indiana University school of medicine shall adopt rules under IC 4-22-2 concerning the following:

(1) Standards and regulations for the:

(A) selection;

(B) training; and

(C) certification;

of breath test operators.

(2) Standards and regulations for the:

(A) selection; and

(B) certification;

of breath test equipment and chemicals.

(3) The certification of the proper technique for administering a breath test.

(b) Certificates issued in accordance with rules adopted under subsection (a) shall be sent to the clerk of the circuit court in each county where the breath test operator, equipment, or chemicals are used to administer breath tests. However, failure to send a certificate does not invalidate any test.

(c) Certified copies of certificates issued in accordance with rules adopted under subsection (a):

(1) are admissible in a proceeding under this chapter, IC 9-30-5, IC 9-30-9, or IC 9-30-15;

(2) constitute prima facie evidence that the equipment or chemical:

(A) was inspected and approved by the department of toxicology on the date specified on the certificate copy; and

(B) was in proper working condition on the date the breath test was administered if the date of approval is not more than one hundred eighty (180) days before the date of the breath test;

(3) constitute prima facie evidence of the approved technique for administering a breath test; and

(4) constitute prima facie evidence that the breath test operator was certified by the department of toxicology on the date specified on the certificate.

(d) Results of chemical tests that involve an analysis of a person's breath are not admissible in a proceeding under this chapter, IC 9-30-5, IC 9-30-9, or IC 9-30-15 if:

(1) the test operator;

(2) the test equipment;

(3) the chemicals used in the test, if any; or

(4) the techniques used in the test;

have not been approved in accordance with the rules adopted under subsection (a).

As added by P.L.2-1991, SEC.18. Amended by P.L.53-1994, SEC.9.

IC 9-30-6-6

Chemical tests on blood, urine, or other bodily substance;

disclosure of results; no privilege or liability; results admissible; limitation

Sec. 6. (a) A physician or a person trained in obtaining bodily substance samples and acting under the direction of or under a protocol prepared by a physician, who:

- (1) obtains a blood, urine, or other bodily substance sample from a person, regardless of whether the sample is taken for diagnostic purposes or at the request of a law enforcement officer under this section; or
- (2) performs a chemical test on blood, urine, or other bodily substance obtained from a person;

shall deliver the sample or disclose the results of the test to a law enforcement officer who requests the sample or results as a part of a criminal investigation. Samples and test results shall be provided to a law enforcement officer even if the person has not consented to or otherwise authorized their release.

(b) A physician, a hospital, or an agent of a physician or hospital is not civilly or criminally liable for any of the following:

- (1) Disclosing test results in accordance with this section.
- (2) Delivering a blood, urine, or other bodily substance sample in accordance with this section.
- (3) Obtaining a blood, urine, or other bodily substance sample in accordance with this section.
- (4) Disclosing to the prosecuting attorney or the deputy prosecuting attorney for use at or testifying at the criminal trial of the person as to facts observed or opinions formed.
- (5) Failing to treat a person from whom a blood, urine, or other bodily substance sample is obtained at the request of a law enforcement officer if the person declines treatment.
- (6) Injury to a person arising from the performance of duties in good faith under this section.

(c) For the purposes of this chapter, IC 9-30-5, or IC 9-30-9:

- (1) the privileges arising from a patient-physician relationship do not apply to the samples, test results, or testimony described in this section; and
- (2) samples, test results, and testimony may be admitted in a proceeding in accordance with the applicable rules of evidence.

(d) The exceptions to the patient-physician relationship specified in subsection (c) do not affect those relationships in a proceeding not covered by this chapter, IC 9-30-5, or IC 9-30-9.

(e) The test results and samples obtained by a law enforcement officer under subsection (a) may be disclosed only to a prosecuting attorney or a deputy prosecuting attorney for use as evidence in a criminal proceeding under this chapter, IC 9-30-5, or IC 9-30-9.

(f) This section does not require a physician or a person under the direction of a physician to perform a chemical test.

(g) A physician or a person trained in obtaining bodily substance samples and acting under the direction of or under a protocol prepared by a physician shall obtain a blood, urine, or other bodily substance sample if the following exist:

- (1) A law enforcement officer requests that the sample be

obtained.

(2) The law enforcement officer has certified in writing the following:

(A) That the officer has probable cause to believe the person from whom the sample is to be obtained has violated IC 9-30-5.

(B) That the person from whom the sample is to be obtained has been transported to a hospital or other medical facility.

(C) That the person from whom the sample is to be obtained has been involved in a motor vehicle accident that resulted in the serious bodily injury or death of another.

(D) That the accident that caused the serious bodily injury or death of another occurred not more than three (3) hours before the time the sample is requested.

(3) Not more than the use of reasonable force is necessary to obtain the sample.

(h) If the person:

(1) from whom the bodily substance sample is to be obtained under this section does not consent; and

(2) resists the taking of a sample;

the law enforcement officer may use reasonable force to assist an individual, who must be authorized under this section to obtain a sample, in the taking of the sample.

(i) The person authorized under this section to obtain a bodily substance sample shall take the sample in a medically accepted manner.

(j) A law enforcement officer may transport the person to a place other than a hospital where the sample may be obtained by any of the following persons who are trained in obtaining bodily substance samples and who have been engaged to obtain samples under this section:

(1) A physician holding an unlimited license to practice medicine or osteopathy.

(2) A registered nurse.

(3) A licensed practical nurse.

(4) An advanced emergency medical technician (as defined in IC 16-18-2-6).

(5) A paramedic.

As added by P.L.2-1991, SEC.18. Amended by P.L.2-1993, SEC.69; P.L.132-1993, SEC.1; P.L.1-1994, SEC.40.

IC 9-30-6-7

Refusal to submit to chemical tests, or test results in prima facie evidence of intoxication; duties of arresting officer

Sec. 7. (a) If a person refuses to submit to a chemical test, the arresting officer shall inform the person that refusal will result in the suspension of the person's driving privileges.

(b) If a person refuses to submit to a chemical test after having been advised that the refusal will result in the suspension of driving privileges or submits to a chemical test that results in prima facie evidence of intoxication, the arresting officer shall do the following:

- (1) Obtain the person's driver's license or permit if the person is in possession of the document and issue a receipt valid until the initial hearing of the matter held under IC 35-33-7-1.
- (2) Submit a probable cause affidavit to the prosecuting attorney of the county in which the alleged offense occurred.
- (3) Send a copy of the probable cause affidavit submitted under subdivision (2) to the bureau.

As added by P.L.2-1991, SEC.18.

IC 9-30-6-8

Probable cause; determination; delivery of affidavit and bureau certificate to bureau; contents of affidavit; initial hearing

Sec. 8. (a) Whenever a judicial officer has determined that there was probable cause to believe that a person has violated IC 9-30-5 or IC 14-15-8, the clerk of the court shall forward:

- (1) a copy of the affidavit; and
- (2) a bureau certificate as described in section 16 of this chapter; to the bureau.

(b) The probable cause affidavit required under section 7(b)(2) of this chapter must do the following:

- (1) Set forth the grounds for the arresting officer's belief that there was probable cause that the arrested person was operating a vehicle in violation of IC 9-30-5 or a motorboat in violation of IC 14-15-8.
- (2) State that the person was arrested for a violation of IC 9-30-5 or operating a motorboat in violation of IC 14-15-8.
- (3) State whether the person:
 - (A) refused to submit to a chemical test when offered; or
 - (B) submitted to a chemical test that resulted in prima facie evidence that the person was intoxicated.
- (4) Be sworn to by the arresting officer.

(c) If it is determined under subsection (a) that there was probable cause to believe that a person has violated IC 9-30-5 or IC 14-15-8, at the initial hearing of the matter held under IC 35-33-7-1:

- (1) the court shall recommend immediate suspension of the person's driving privileges to take effect on the date the order is entered;
- (2) the court shall order the person to surrender all driver's licenses, permits, and receipts; and
- (3) the clerk shall forward the following to the bureau:
 - (A) The person's license or permit surrendered under this section or section 3 or 7 of this chapter.
 - (B) A copy of the order recommending immediate suspension of driving privileges.

As added by P.L.2-1991, SEC.18. Amended by P.L.57-1995, SEC.4.

IC 9-30-6-9

Suspension of driving privileges; duties of bureau; limitations; nature of action; suspension and reinstatement

Sec. 9. (a) If the affidavit under section 8(b) of this chapter states that a person refused to submit to a chemical test, the bureau shall

suspend the driving privileges of the person:

- (1) for one (1) year; or
- (2) until the suspension is ordered terminated under IC 9-30-5.

(b) If the affidavit under section 8(b) of this chapter states that a chemical test resulted in prima facie evidence that a person was intoxicated, the bureau shall suspend the driving privileges of the person:

- (1) for one hundred eighty (180) days; or
- (2) until the bureau is notified by a court that the charges have been disposed of;

whichever occurs first.

(c) Whenever the bureau is required to suspend a person's driving privileges under this section, the bureau shall immediately do the following:

(1) Mail a notice to the person's last known address that must state that the person's driving privileges will be suspended for a specified period, commencing:

- (A) five (5) days after the date of the notice; or
- (B) on the date the court enters an order recommending suspension of the person's driving privileges under section 8(c) of this chapter;

whichever occurs first.

(2) Notify the person of the right to a judicial review under section 10 of this chapter.

(d) Notwithstanding IC 4-21.5, an action that the bureau is required to take under this article is not subject to any administrative adjudication under IC 4-21.5.

(e) If a person is granted probationary driving privileges under IC 9-30-5 and the bureau has not received the probable cause affidavit described in section 8(b) of this chapter, the bureau shall suspend the person's driving privileges for a period of thirty (30) days. After the thirty (30) day period has elapsed, the bureau shall, upon receiving a reinstatement fee from the person who was granted probationary driving privileges, issue the probationary license if the person otherwise qualifies for a license.

(f) If the bureau receives an order granting probationary driving privileges to a person who has a prior conviction for operating while intoxicated, the bureau shall do the following:

- (1) Issue the person a probationary license and notify the prosecuting attorney of the county from which the order was received that the person is not eligible for a probationary license.
- (2) Send a certified copy of the person's driving record to the prosecuting attorney.

The prosecuting attorney shall, in accordance with IC 35-38-1-15, petition the court to correct the court's order. If the bureau does not receive a corrected order within sixty (60) days, the bureau shall notify the attorney general, who shall, in accordance with IC 35-38-1-15, petition the court to correct the court's order.

As added by P.L.2-1991, SEC.18.

IC 9-30-6-10

Judicial hearing; petition; issues; findings; county prosecutor to represent state; burden of proof; appeal

Sec. 10. (a) A person whose driving privileges have been suspended under section 9 of this chapter is entitled to a prompt judicial hearing. The person may file a petition that requests a hearing:

- (1) in the court where the charges with respect to the person's operation of a vehicle are pending; or
- (2) if charges with respect to the person's operation of a vehicle have not been filed, in any court of the county where the alleged offense or refusal occurred that has jurisdiction over crimes committed in violation of IC 9-30-5.

(b) The petition for review must:

- (1) be in writing;
- (2) be verified by the person seeking review; and
- (3) allege specific facts that contradict the facts alleged in the probable cause affidavit.

(c) The hearing under this section shall be limited to the following issues:

- (1) Whether the arresting law enforcement officer had probable cause to believe that the person was operating a vehicle in violation of IC 9-30-5.
- (2) Whether the person refused to submit to a chemical test offered by a law enforcement officer.

(d) If the court finds:

- (1) that there was no probable cause; or
- (2) that the person's driving privileges were suspended under section 9(a) of this chapter and that the person did not refuse to submit to a chemical test;

the court shall order the bureau to reinstate the person's driving privileges.

(e) The prosecuting attorney of the county in which a petition has been filed under this chapter shall represent the state on relation of the bureau with respect to the petition.

(f) The petitioner has the burden of proof by a preponderance of the evidence.

(g) The court's order is a final judgment appealable in the manner of civil actions by either party. The attorney general shall represent the state on relation of the bureau with respect to the appeal.

As added by P.L.2-1991, SEC.18.

IC 9-30-6-11

Reinstatement of driving privileges; conditions; findings of fact

Sec. 11. (a) Notwithstanding any other provision of this chapter, IC 9-30-5, or IC 9-30-9, the court shall order the bureau to reinstate the driving privileges of a person if:

- (1) all of the charges under IC 9-30-5 have been dismissed and the prosecuting attorney states on the record that no charges will be refiled against the person;
- (2) the court finds the allegations in a petition filed by a defendant under section 18 of this chapter are true; or
- (3) the person:

(A) did not refuse to submit to a chemical test offered as a result of a law enforcement officer having probable cause to believe the person committed the offense charged; and
(B) has been found not guilty of all charges by a court or by a jury.

(b) The court's order must contain findings of fact establishing that the requirements for reinstatement described in subsection (a) have been met.

(c) A person whose driving privileges are reinstated under this section is not required to pay a reinstatement fee.

As added by P.L.2-1991, SEC.18.

IC 9-30-6-12

Suspension of driving privileges recommended by court; compliance; limitation

Sec. 12. (a) If a court recommends suspension of the driving privileges under this chapter, IC 9-30-5, or IC 9-30-9:

(1) the bureau shall comply with the recommendation of suspension, and the driving privileges of the person remain suspended for the period set by the court; and

(2) the person shall surrender to the court all licenses, permits, or receipts issued to the person, and the court shall immediately forward the licenses, permits, or receipts to the bureau with the abstract of conviction or judgment.

(b) During the three (3) years following the termination of the suspension the person's driving privileges remain suspended until the person provides proof of financial responsibility in force under IC 9-25.

(c) If at any time during the three (3) years following the termination of the suspension imposed under subsection (a) a person who has provided proof of financial responsibility under IC 9-25 fails to maintain the proof, the bureau shall suspend the person's driving privileges until the person again provides proof of financial responsibility under IC 9-25.

(d) An agency action under this section is not subject to IC 4-21.5.
As added by P.L.2-1991, SEC.18.

IC 9-30-6-13

Reinstatement of driving privileges; duties of bureau

Sec. 13. If a court orders the bureau to reinstate a person's driving privileges under this article, the bureau shall comply with the order. Unless the order for reinstatement is issued under section 11(2) of this chapter, the bureau shall also do the following:

(1) Remove any record of the suspension from the bureau's recordkeeping system.

(2) Reinstatement the privileges without cost to the person.

As added by P.L.2-1991, SEC.18.

IC 9-30-6-13.5

Removal of suspension from record

Sec. 13.5. Whenever a case filed under IC 9-30-5 is terminated in favor of the defendant and the defendant's driving privileges were

suspended under section 9(b) of this chapter, the bureau shall remove any record of the suspension, including the reason for suspension, from the defendant's official driving record.

As added by P.L.103-1991, SEC.3.

IC 9-30-6-14

Certified copies of driving and court records as prima facie evidence

Sec. 14. In a proceeding under this article:

(1) a certified copy of a person's driving record obtained from the bureau; or

(2) a certified copy of a court record concerning a previous conviction;

constitutes prima facie evidence that the person has a previous conviction of operating while intoxicated.

As added by P.L.2-1991, SEC.18.

IC 9-30-6-15

Evidence of blood alcohol content shown by chemical tests admissible

Sec. 15. (a) At any proceeding concerning an offense under IC 9-30-5 or a violation under IC 9-30-15, evidence of the alcohol concentration that was in the blood of the person charged with the offense:

(1) at the time of the alleged violation; or

(2) within the time allowed for testing under section 2 of this chapter;

as shown by an analysis of the person's breath, blood, urine, or other bodily substance is admissible.

(b) If, in a prosecution for an offense under IC 9-30-5, evidence establishes that:

(1) a chemical test was performed on a test sample taken from the person charged with the offense within the period of time allowed for testing under section 2 of this chapter; and

(2) the person charged with the offense had an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per:

(A) one hundred (100) milliliters of the person's blood at the time the test sample was taken; or

(B) two hundred ten (210) liters of the person's breath;

the trier of fact shall presume that the person charged with the offense had an alcohol concentration equivalent to at least eight-hundredths (0.08) gram of alcohol per one hundred (100) milliliters of the person's blood or per two hundred ten (210) liters of the person's breath at the time the person operated the vehicle. However, this presumption is rebuttable.

(c) If evidence in an action for a violation under IC 9-30-5-8.5 establishes that:

(1) a chemical test was performed on a test sample taken from the person charged with the violation within the time allowed for testing under section 2 of this chapter; and

- (2) the person charged with the violation:
- (A) was less than twenty-one (21) years of age at the time of the alleged violation; and
 - (B) had an alcohol concentration equivalent to at least two-hundredths (0.02) gram of alcohol per:
 - (i) one hundred (100) milliliters of the person's blood; or
 - (ii) two hundred ten (210) liters of the person's breath;
- at the time the test sample was taken;

the trier of fact shall presume that the person charged with the violation had an alcohol concentration equivalent to at least two-hundredths (0.02) gram of alcohol per one hundred (100) milliliters of the person's blood or per two hundred ten (210) liters of the person's breath at the time the person operated the vehicle. However, the presumption is rebuttable.

(d) If, in an action for a violation under IC 9-30-15, evidence establishes that:

- (1) a chemical test was performed on a test sample taken from the person charged with the offense within the time allowed for testing under section 2 of this chapter; and
 - (2) the person charged with the offense had an alcohol concentration equivalent to at least four-hundredths (0.04) gram of alcohol per:
 - (A) one hundred (100) milliliters of the person's blood; or
 - (B) two hundred ten (210) liters of the person's breath;
- at the time the test sample was taken;

the trier of fact shall presume that the person charged with the offense had an alcohol concentration equivalent to at least four-hundredths (0.04) gram of alcohol by weight in grams per one hundred (100) milliliters of the person's blood or per two hundred ten (210) liters of the person's breath at the time the person operated the vehicle. However, this presumption is rebuttable.

As added by P.L.2-1991, SEC.18. Amended by P.L.53-1994, SEC.10; P.L.96-1996, SEC.6; P.L.33-1997, SEC.11; P.L.1-2000, SEC.11; P.L.175-2001, SEC.11.

IC 9-30-6-16

Bureau certificate; form and contents

Sec. 16. The bureau certificate must contain the following information and may be substantially in the following form:

BUREAU OF MOTOR VEHICLES							
CERTIFICATE							
Date of Arrest	Time	Driver's License No.	L i c e n s e State				
			a.m.				
			p.m.				
Name: (first)	(M.I.)	(last)	Date of Birth				
			/ /				
CURRENT Address (street, city, state, zip)							
Court Code	Cause Number	Sex	Weight	Height	Eyes	Hair	
The above motorist REFUSED alcohol test			BUREAU USE ONLY				
FAILED alcohol test 0.%							

Court Determination

It has been determined there was probable cause the defendant violated IC 9-30-5 this _____ day of _____, 19__ and that charges are pending herein.

_____ Court _____ County

Judge's Signature

As added by P.L.2-1991, SEC.18.

IC 9-30-6-17

Trial date; notice; application

Sec. 17. (a) At least ten (10) days before the scheduled trial date of a person charged with a violation of IC 9-30-5, the prosecuting attorney shall notify any person who suffered bodily injury as a result of the alleged offense of the scheduled trial date. The notice must include information concerning the time and place of the trial.

(b) If the injured person died as a result of the alleged offense, the notice required under subsection (a) shall be given to the deceased person's parents, spouse, and children.

(c) This section applies only if the defendant's trial occurs more than ten (10) days after the alleged offense.

(d) A prosecuting attorney's failure to comply with this section is not grounds for postconviction relief.

As added by P.L.2-1991, SEC.18.

IC 9-30-6-18

Suspension on chemical test results; reinstatement upon petition

Sec. 18. (a) A person whose driving privileges have been suspended under section 9(b) of this chapter is entitled to reinstatement of driving privileges if the following occur:

(1) After a request for an early trial is made by the person at the initial hearing on the charges, a trial or other disposition of the charges for which the person was arrested under IC 9-30-5 is not held within ninety (90) days after the date of the person's initial hearing on the charges.

(2) The delay in trial or disposition of the charges is not due to the person arrested under IC 9-30-5.

(b) A person who desires reinstatement of driving privileges under this section must file a verified petition in the court where the charges against the petitioner are pending. The petition must allege the following:

(1) The date of the petitioner's arrest under IC 9-30-5.

(2) The date of the petitioner's initial hearing on the charges filed against the petitioner under IC 9-30-5.

(3) The date set for trial or other disposition of the matter.

(4) A statement averring the following:

(A) That the petitioner requested an early trial of the matter at the petitioner's initial hearing on the charges filed against the petitioner under IC 9-30-5.

(B) The trial or disposition date set by the court is at least ninety (90) days after the date of the petitioner's initial

hearing on the charges filed against the petitioner under IC 9-30-5.

(C) The delay in the trial or disposition is not due to the petitioner.

(c) Upon the filing of a petition under this section, the court shall immediately examine the record of the court to determine whether the allegations in the petition are true.

(d) If the court finds the allegations of a petition filed under this section are true, the court shall order reinstatement of the petitioner's driving privileges under section 11 of this chapter. The reinstatement must not take effect until ninety (90) days after the date of the petitioner's initial hearing.

As added by P.L.2-1991, SEC.18.